United Nations A/HRC/29/NGO/44

General Assembly

Distr.: General
5 June 2015

English only

Human Rights Council
Twenty-ninth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-09026 (E)
1509026

Please recycle

Myanmar: Extrajudicial killings continue with impunity

1. The Asian Legal Resource Centre (ALRC) would like to bring the realities of extrajudicial killings in Myanmar to the attention of the United Nations Human Rights Council. The government's claim that the State is in a democratic reform process is belied by the prevailing reality of extrajudicial killings, abuse of power, and impunity in Myanmar.

2. The Myanmar semi-civilian government, which came to power after decades of Military rule, has failed to prosecute extrajudicial killers who committed numerous such crimes under the umbrella of the Military; and it continues to protect perpetrators of more recent extrajudicial killings. The military in Myanmar has long enjoyed impunity for offences committed against civilians, and despite recent political changes, prosecutions of errant soldiers are extremely rare.

3. The ALRC, along with its sister organization, the Asian Human Rights Commission, has documented numerous cases where the Myanmar police have tortured civilians to death while in custody. Mostly, there is complete impunity. On the few occasions such acts are "punished", the cases are handled under the Myanmar Police Force Maintenance of Discipline Law and not under criminal law. Furthermore, Executive intervention at all levels of the Judiciary has made court proceedings a time-consuming masquerade that invariably delivers injustice. The ALRC would like to share with Council the following recent cases of extrajudicial killings, abuse of power, and impunity.

4. On 22 December 2014, the police opened fire on protesters in relation to land confiscated for the Letpadaung Copper Mine Project. A female farmer, Daw Khin Win, was shot to death during the operation. When the companies started fencing paddy fields for the project, local farmers protested against the action of fencing their farmland. Most farmers had not accepted the compensation offered by China's Wanbao Mining and the Burmese military-owned company Union of Myanmar Economic Holding Ltd. (UMEHL). No proper system for negotiation with the farmers led to protests, and the police resorted to force, cracking down on the farmers and firing on them using live bullets. Daw Khin Win died on spot, while stray bullets injured others. After an autopsy, the family of the deceased lodged a murder case against the shooters. The police stated that the case was under a death inquest so no further action could be taken. On 9 April 2015, Sarlingyi Township Court gave their judgment on the case stating that the death was not natural. In May 2015, the Sarlingyi Township Police station opened a murder case, having earlier refused the request of the victim's family to open a case.

5. If history is any indicator, Daw Khin Win's family's fight for justice is an uphill one. The impunity of the authorities in relation to the Letpadaung Copper Mine Project has been longstanding. There have been numbers of protests, and use of excessive force by the State in response. A particularly violent crackdown on the peaceful protesters occurred on 29 November 2012. Early on that morning, police attacked encamped protesters, primarily monks, by firing white phosphorous on them, causing extensive burns to many. The Minister of Home affairs, who ordered the attack, has still not been held accountable, and no justice, or even compensation, has resulted.

6. On 19 January 2015, two ethnic Kachin volunteer teachers were tortured, sexually assaulted, and murdered, allegedly by soldiers of the Myanmar Army. The deceased had volunteered to work for the Kachin Baptist Church. They had been serving in a village near the conflict zone in the northern Shan state, where the Myanmar Army and Kachin rebel groups have been battling. Invariably, whenever conflict would spark, the Burmese Army would pass through the village where the teachers were serving. A few days before the women were killed, an Army battalion arrived and camped 100 metres from the area where the women were attacked and killed. To date, the murderers remain at large. No autopsy report or information related to any further investigation has been provided to the families of the victims.

7. A similar case took place in 2013. Three men attacked and robbed a young couple out for an evening stroll on the riverbank in Pyay. They murdered the man. With the help of local people, two out of the three were arrested within a few hours. Later, police found out the three men are soldiers from a nearby army base. Following the incident, the Army moved the accused back to base. A court martial found the men guilty of a minor offence but not of murder. They were subjected to military discipline for their minor offence; this foreclosed the matter. And, that has been the end of the quest of justice for the victims' families. According to law, once the army has completed its military judicial proceedings, where soldiers have committed a crime against civilians, they must be transferred to civilian court for

continued proceedings. However, military personnel, no matter how serious the crime, continue to be shielded from civilian courts.

8. Freelance journalist Aung Kyaw Naing (aka Par Gyi) was killed while in custody of the Burmese Army and his body was hastily buried before the story broke in the press. When his wife inquired about her husband on 19 October 2014, the Army said he had been arrested on 30 September 2014. However, the Captain of the Light Infantry Battalion said that he had no idea of Par Gyi's whereabouts. Later, an unofficial statement was released by the Army, dated 23 October 2014, which states that Par Gyi tried to escape on 4 October 2014 by grabbing a rifle from one of the guards, and that he was then shot to death and his body was buried south of Shwe War Chaung Village, less than a kilometer away from where he was killed.

9. According to the law, when a citizen dies in a military exclusion zone, the military must file a report with the police with details, among other things, of the identity of the victim. Available facts make it clear that proper procedures were not followed. After stalling, eventually, the police decided that an investigation would be appropriate, but the Army refused to turn over the body to the investigators. However, the statement admitting that Par Gyi had been shot to death created pressure. Subsequently, the Myanmar National Human Rights Commission (MNHRC) formed an investigation team, and exhumation of the body commenced on the 5 November 2014. According to Par Gyi's wife and her lawyers, at least one medical doctor who examined the body has acknowledged verbally that the cause of death was not as recorded. Par Gyi appears to have been killed by a pistol shot from under his jaw, rather than by rifle shots. In conflict areas of Burma, civilians face such violence and impunity in routine. People are labeled as members of ethnic rebel groups, arrested by the Burmese Army, and then disappeared or murdered.

10. On 2 December 2014, the MNHRC released an inquiry report, recommending that Par Gyi's case be brought before a civilian court. However, while the death inquest in the civilian court is ongoing, more than five months after the incident, a court martial has acquitted the perpetrators. Furthermore, as an MNHRC statement dated 8 May 2015 has revealed, the court martial proceedings states that the soldiers responsible for killing Par Gyi were in active service, which makes the case fall under Section 72 of the Defence Services Act, and therefore under military jurisdiction. This showcases how the Myanmar Military has long been interpreting the field of active service in a wide manner to prevent civilian courts from trying soldiers. Par Gyi was picked up, brought the Army camp, and extrajudicially executed, and despite Myanmar apparently taking a turn towards democracy, impunity for such crimes prevails.

11. People in the Myanmar and those abroad are looking to such cases involving crimes committed by state officers for evidence of a change in the systemic conditions of impunity. According to the 2008 Constitution of Myanmar, civilians have the right to life and the right to remedy. However, so far, the government has failed to uphold the rule of law, and ensure equality before law for state officers that have committed crimes such as extrajudicial killings.

12. The ALRC calls upon the Human Rights Council and the Special Procedures of the High Commissioner to pursue lines of open communication and creative action. The State must see to it that the subject of extrajudicial executions and impunity for such crimes is seriously and extensively explored, as one part of addressing the massive incidence of human rights abuses that continue with impunity in Myanmar.